IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/09/2003

CORAM

THE HONOURABLE MR.JUSTICE P.SATHASIVAM

W.P.No.10286 of 2003

M/s.Sumangala Steel Ltd.
rep. by its Directorate
Sri.Sabanayagam
No.45, Chamiers Road
Chennai-600 028. .. Petitioner

-Vs-

1. The Chairman and Managing Director
SIPCOT
No.19-A, Rukmani Lakshmipathi Road
Egmore, Chennai-8.

2. The Commercial Tax Officer
Mandaveli Assessment Circle.

3. The Branch Manager
Indus Ind. Bank
Nungambakkam Branch
Chennai-34. .. Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.K.Jayachandran

For respondent-1 : Mr.P.S.Seetharaman

For respondent-2 : Mrs.G.Kavitha
Government Advocate

:ORDER

Considering the fact that the issue raised in the writ petition has been considered in the earlier decisions of this Court, the main writ petition itself is taken up for disposal.

2. Aggrieved by the recovery proceedings issued by the second respondent to the third respondent dated 28.3.2003, the petitioner has filed

the above writ petition to quash the same as unsustainable and prayed for a direction to the second respondent not to proceed without the consent of the Board of B.I.F.R. and no recovery proceedings by coercive methods can be initiated against the petitioner.

2. Heard both sides.

3. The question relates to recovery of sales tax from the petitioner. The main contention of the petitioner is that in view of the pendency of proceedings before the B.I.F.R. in Case No.113 of 1997, the realisation of the amount should be stayed.

4. It is relevant to note that in 1997 (94) E.L.T. 477 (S.C.) TATA DAVY LTD. V. STATE OF ORISSA, the Honourable Supreme Court has observed that the arrears of sales tax cannot be recovered without obtaining the consent of the Board. Similar view has been expressed by a Division Bench of this Court in Writ Appeal No.1831 of 2001 (M/s.ESSORPE MILLS LTD. V. THE CENTRAL PROVIDENT FUND COMMISSIONER, NEW DELHI AND OTHERS), by judgment dated 2.11.2001.

5. Following the above-said decisions, P.K.Misra,J., in W.P.No.30163 of 2002, by order dated 20.8.2002, disposed of the said writ petition observing that without obtaining the consent of the Board (B.I.F.R.), the sales tax dues cannot be recovered from the petitioner.

6. There is no dispute that all the above decisions are applicable to the case on hand. Accordingly, the writ petition is disposed of with the observation that without obtaining the consent of the Board (B.I.F.R.), sales tax cannot be recovered from the petitioner. No costs. Consequently, W.P.M.P.No.13020 of 2003 is closed.

Index: Yes
Internet: Yes

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To:
1. The Chairman and Managing Director
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Egmore, Chennai-8.

2. The Commercial Tax Officer
Mandaveli Assessment Circle.